

**2004 Annual Report to the Legislature**

# **Pesticide Investigations and Enforcement**

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## Legislative Mandate

As stated in RCW 15.58.420 and RCW 17.21.350, the Washington State Department of Agriculture (WSDA) is to report annually to the appropriate committees of the House of Representatives and the Senate on the activities of the department under Chapter 15.58 RCW, the Washington Pesticide Control Act, and Chapter 17.21 RCW, the Washington Pesticide Application Act. The report is to include (1) a review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information.

This report presents information only on the department's pesticide incident investigation and enforcement activities. The department does not carry out a pesticide residue food monitoring program and no longer participates in the pesticide residue food monitoring program carried out by the U.S. Food and Drug Administration (FDA).

## Pesticide Investigations and Enforcement

The Washington State Department of Agriculture, under authorities granted by Chapter 15.58 RCW, the Washington Pesticide Control Act and Chapter 17.21 RCW, the Washington Pesticide Application Act, protects the environment and the physical and economic health and welfare of the citizens of the state. As provided in these statutes, WSDA regulates the sale and use of all pesticides in Washington state.

Among other activities, this involves the registration of more than 11,000 pesticide products, the licensing of approximately 25,000 pesticide applicators, dealers and consultants, and the investigation of complaints of pesticide misuse. WSDA coordinates activities closely with other Washington state agencies, federal agencies and citizens of the state.

## Complaint Investigations

In 2004, WSDA investigated 197 complaints involving pesticide use, sales, and distribution; pesticide licensing; and building inspections for wood-destroying organisms. Table 1 provides the number of complaint (cases) investigated and resulting number of violations for the past three years.

**Table 1. Total Complaints and Violations, 2002-2004**

Year	Total Complaints	Total Violations
2002	253	115
2003	222	120
2004	197	107*

\* Based upon cases completed to date

WSDA is required to respond to cases of human exposure within one working day of receipt. In 2004, a total of 47 human exposure complaints were received compared to 22 human exposure complaints in 2003. All 47 human exposure complaints were responded to within one working day. All other cases were responded to within two working days.

Complaints that resulted in violations involved primarily three types of activity in 2004: agricultural, commercial/industrial, and pest control operator/wood destroying organism inspections (PCO/WDO). This is summarized in Table 2.

**Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2002-2004**

Type of Activity	2002	2003	2004
Agricultural	42	31	30
Commercial/Industrial	38	44	29
PCO/WDO	22	36	33
Residential (non-commercial)	30	8	4
Right-of Way	1	8	11
<b>Total Violations</b>	<b>115</b>	<b>123</b>	<b>107*</b>

\*Based upon cases completed to date

The top counties where complaints originated include: King 28, Grant 19, Spokane 18, Benton 16, Yakima 15, Walla Walla 11, Pierce 10 and Snohomish 10. Table 3 provides a complete listing of complaints by county for the past three years.

**Table 3. Complaints by County, 2002-2004**

County	2002	2003	2004
Adams	5	4	5
Asotin	1	1	0
Benton	8	13	16
Chelan	16	12	8
Clallam	1	2	3
Clark	8	11	5
Columbia	2	0	1
Cowlitz	1	1	0
Douglas	10	8	2
Ferry	0	0	0
Franklin	6	7	5
Garfield	4	0	1
Grant	14	19	19
Grays Harbor	3	1	6
Island	0	0	3
Jefferson	1	0	1
King	24	23	28
Kitsap	4	4	4
Kittitas	2	1	1
Klickitat	6	3	2

County	2002	2003	2004
Lewis	4	6	1
Lincoln	4	5	4
Mason	0	1	0
Okanogan	8	5	5
Pacific	0	0	0
Pend Oreille	0	1	0
Pierce	16	21	10
San Juan	0	0	0
Skagit	10	4	3
Skamania	1	0	0
Snohomish	7	4	10
Spokane	28	19	18
Stevens	2	4	1
Thurston	16	16	7
Wahkiakum	0	0	0
Walla Walla	10	6	11
Whatcom	4	3	0
Whitman	4	6	2
Yakima	23	11	15
<b>Totals</b>	<b>253</b>	<b>222</b>	<b>197</b>

## Formal and Non-Formal Enforcement Actions

WSDA can take a range of actions on determination of a violation. **Only the Notice of Intent (NOI) is a formal enforcement action** under the Administrative Procedures Act (RCW 34.05). An NOI is a formal enforcement document stating the department's intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license.

WSDA also takes **non-formal enforcement actions**. These include:

- A verbal warning administered verbally by a field investigator to an alleged infractor, which specifies the violative act.
- An advisory letter, which provides specific written advice to an alleged infractor on how to comply with the laws and rules related to pesticides.
- A Notice of Correction (NOC), which is a written document issued to an alleged infractor when a minor violation of the laws and rules related to pesticides has occurred. The NOC identifies the specific law and/or rule that was violated, information on how to correct the violation, and a time by which the violation must be corrected.

Under WSDA's pesticide violation penalty matrix, the maximum penalty WSDA may assign is \$7,500 per violation and/or 90 days license suspension or license denial or revocation. The typical penalty for a non-serious, first-time violation is \$200 to \$500 and a license suspension of two to six days; however, a first-time violation would, in most cases, result in the administration of a NOC and not advance to the civil penalty stage until a repeat violation was identified.

The typical penalty for a first-time human exposure violation is \$350 to \$550 and a license suspension of five to nine days; however, actual case results, which reflect multiple violations and/or aggravating circumstances, have resulted in fines averaging \$1,000. In first-time human exposure cases, WSDA may proceed directly to civil penalty without first issuing an NOC. WSDA may also refer appropriate cases to EPA for criminal prosecution or civil action. Table 4 summarizes the formal and non-formal enforcement actions completed in the last three years.

Please note: The complaints in a given year do not directly correlate with the enforcement actions in that year. Enforcement action is often completed in the year after the complaint is received, due to when the complaint is received and the complexity of the investigation. Also, some complaints result in action being taken against more than one individual. For information on enforcement action taken on a specific complaint, see the appropriate annual report of the Pesticide Incident Reporting and Tracking (PIRT) Review Panel, prepared by the Department of Health as required by RCW 70.104.090.

**Table 4. Enforcement Actions Completed, 2002-2004**

Action Completed	2002	2003	2004
<b><i>Formal Enforcement Action</i></b>			
Actions resulting from Notices of Intent (NOI)	52	33	30*
License Suspension (days)	1,479	294	942
Civil penalties assessed	\$51,125	\$28,350	13,460
<b><i>Non-Formal Enforcement Action</i></b>			
Notices of Correction (NOC) issued	101	147	117

\*Includes 3 NOIs to deny license

To the extent possible, WSDA tries to work with individuals to correct violative acts by issuing an NOC. In the last three years, WSDA has issued two to four times more NOCs than NOIs. An NOC is not considered a formal enforcement action under RCW 43.05.100 (2). Other actions, such as a verbal warning or advisory letter, are not tracked, but are part of a case investigation file.